

Monte L. Haney
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212

United States District Court
for the Northern District of California

Monte L. Haney
Petitioner
VS.

Derral G. Adams Warden
Respondent

Court **FILED** 4682
Motion to Amend the Petition

APR 30 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

I the Petitioner Monte Haney is hereby filing a motion to amend the federal writ of habeas corpus that Petitioner initially filed in the northern district court on 9-11-07. Petitioner Request to add one claim to the Petition that "relates Back" to the matters set forth in the original Petition. See Fed. R. Civ. P. 15(c)(2) Relation Back of Amendments: an amendment of a Pleading relates back to the date of the original Pleading when the claim or defense asserted in the amended Pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original Pleading. On 12-20-06 the first appellate district court ruled in my favor and declared that the trial Judge caused a sentencing error. On March 11 2005 the trial Judge Carol Yaggy sentenced me to CA Penal Code 12022.7(e) inconsistent with the Jury's findings of 12022.7(a). After the first appellate district court recognized this error they directed that the abstract of Judgment be modified to comport with the Jury's true findings. Penal Code Section 12022.7(e) requires an additional term of three, four, or five years while Penal Code Section 12022.7

1 (a) is an additional term of three years, at sentencing
2 the court imposed a consecutive four year term under
3 subdivision (e) the court also ordered additional four
4 year terms under subdivision (e) for assault counts and
5 stated them under 654. On 10-23-07 Petitioner filed
6 a writ of mandate in the San Francisco Superior Court
7 for a Reduction of Sentence But the Court never answered
8 the Petition. On 2-25-08 I wrote the first district
9 Court of appeal to inform the court that San Francisco
10 Superior Court Refused to answer the writ of mandate.
11 Simultaneously Petitioner asked the first district
12 Court of appeal if they would contact the San Francisco
13 Superior Court and inquire about this matter and
14 assist me to obtain the Reduction of Sentence but
15 the Court of appeals have not answered my letter either.
16 (See notice of Lodging Records exhibit A) (See notice of
17 Lodging Records exhibit B) (See notice of Lodging Records
18 exhibit C). the Petitioner has Diligently tried to
19 obtain a Reduction and Correction of Sentence and is
20 unable to do so. therefore Petitioner is Compelled
21 to file this motion to Amend the federal writ
22 of habeas corpus that was filed in the northern
23 district court on 9-11-07. (See notice of Lodging Records
24 exhibit N). On 9-12-07 state collateral Review of
25 Petitioner's Sentence was completed in the CA Supreme
26 Court (See notice of Lodging Records exhibit L.) therefore
27 Petitioner has met the time restraint of 28 U.S.C. 2244(a)(1)
28 and 2254 because the one year filing deadline was

1 tolled while Petitioner Pursued collateral attack of
 2 Conviction in the state courts. See, Gatson v. Palmer, 417
 3 F.3d 1030, 1038 (9th Cir, 2005) (limitation tolled while Properly
 4 filed application for state collateral review is pending.
 5 the Attorney General has not filed any responsive
 6 Pleading in this matter therefore Petitioner Request
 7 to Amend the Petition. See Slack v. McDaniel 120
 8 S.Ct 1595, 146 L.ed.2d 542 (2000) see also Stewart v. Martinez-
 9 Villareal 523 U.S. 637, 118 S.Ct. 1618, 140 L.ed.2d 849 (1998) the
 10 bar on successive Petitions applies only where the
 11 claim was actually adjudicated and denied on the
 12 merits in a federal proceeding. Petitioner made an
 13 inadvertent mistake and did not Request a correction
 14 of Sentence in the original Petition filed on 9-11-07
 15 Court no C074682 and now Petitioner Request the
 16 Court allow the Petitioner to add the additional
 17 claim along with the Previous claims in the Petition.
 18 (See notice of Lodging Records exhibit N).

19
 20
 21
 22 for the reasons stated herein but not limited to,
 23 Petitioner Respectfully Request the Court Grant Petitioner's
 24 motion to Amend the writ of Habeas corpus.

25
26
27 4-25-08

28 Monte Haraf
 in Pro Se

Monte Hanel # V-72062 4A-2R-5d
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Attorney
and the
US District
Court
San Francisco